

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: January 13, 2005
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re QVC, Inc.

Serial No. 76292022

Manny D. Pokotilow of Caesar, Rivise, Bernstein, Cohen &
Pokotilow, Ltd. for QVC, Inc.

Won T. Oh, Trademark Examining Attorney, Law Office 114
(Margaret Le, Managing Attorney).

Before Hanak, Hairston and Holtzman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application was filed by QVC, Inc. to register the
mark HOMEWORKS for "electric fans, electric space heaters,
and household air cleaners."¹

The trademark examining attorney refused registration
under Section 2(d) of the Trademark Act on the ground that
applicant's mark, if applied to applicant's goods, would so

¹ Application Serial No. 76292022, filed July 30, 2001, based
upon an allegation of a bona fide intention to use the mark in
commerce in connection with the identified goods.

resemble the previously registered mark EQUITABLE HOMEWORKS for "on line and mail order retail store services featuring consumer and commercial energy related products, namely, gas grills, carbon monoxide alarms, gas lamps and gas heaters,"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the marks, we find that they are similar to the extent that they share the term HOMEWORKS. However, registrant's mark also includes the word

² Registration No. 2,753,645 issued August 19, 2003.

EQUITABLE. In view of the suggestive nature of the word HOMEWORKS when used in connection with home products and services, and because EQUITABLE is the first word in registrant's mark, we find that EQUITABLE is the dominant portion of the mark. Thus, applicant's mark HOMEWORKS and registrant's mark EQUITABLE HOMEWORKS create different overall commercial impressions.

We consider next the goods and services in this case. It is well settled that goods/services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods/services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Applying these principles to the present case, we find that the examining attorney has failed to establish that applicant's goods and registrant's services are

sufficiently related in some way that would result in source confusion.

In order to show a relationship between the involved goods and services, the examining attorney submitted copies of five third-party registrations. The examining attorney maintains that such registrations show that applicant's kinds of goods and registrant's types of services are related. However, upon examination of these third-party registrations, we note that none of them cover the type of services in registrant's registration. Rather, the third-party registrations cover the kinds of goods in applicant's application and the kinds of goods featured in registrant's services. Moreover, four of the registrations are for house marks and cover a wide variety of home appliances and home heating products. In short, the third-party registrations are not probative evidence that electric fans, electric space heaters, and household air cleaners, on the one hand, and retail store services featuring consumer and commercial energy related products, namely gas grills, carbon monoxide alarms, gas lamps and gas heaters, on the other hand, may emanate from a single source under a single mark.

Therefore, in view of the cumulative differences in the marks and the goods and services involved herein, we find that there is no likelihood of confusion in this case.

Decision: The refusal to register under Section 2(d) is reversed.